

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH PANDY, JR.,

Plaintiff-Appellee,

v

BOARD OF WATER AND LIGHT,

Defendant-Appellant.

UNPUBLISHED

November 28, 2006

No. 259784

Ingham Circuit Court

LC No. 03-001116-CZ

Before: Cooper, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Defendant appeals by leave granted an order denying its motion for summary disposition on plaintiff's breach of contract claim. This dispute arises out of defendant's termination of plaintiff's employment. We reverse and remand to the trial court to grant defendant's motion for summary disposition of the breach of contract claim and for consideration of plaintiff's remaining claims.

Plaintiff was hired as the Director of the Lansing Board of Water and Light (BWL) in 1984. In 1990, plaintiff and the BWL Board of Commissioners (Board) entered into an employment contract¹ "for a period of five (5) years commencing July 1, 1990, and continuing until June 30, 1995." The contract specified that the arrangement was "at will," and could be terminated "at any time, with or without cause, upon ninety (90) days written notice by the Board." The contract also included these two provisions on severance compensation:

¹ The 1990 Employment Agreement states in the Term of Agreement that Pandey "is hereby appointed to the position of General Manager." However, the preamble to the Agreement states that Pandey "has been employed by the BWL as its Director and General Manager for five (5) years," and also states that "the Board desires to continue to employ" Pandey. Reading the document in its entirety, it is clear that Pandey was employed as Director and General Manager.

The 1992 Agreement confirms this, noting that Pandey "has been employed by the BWL as its Director and General Manager for seven (7) years."

If the Board desires to terminate this Agreement without cause prior to its term, it shall compensate Joseph Pandy, Jr. for the salary and benefits . . . through the completion of the full term of the Agreement

If the Board desires to terminate this Agreement for cause, it shall compensate Joseph Pandy, Jr. only for the remainder of the current BWL fiscal year. . . .

In 1992, the parties executed a second contract. The new agreement provided for automatic renewal on July 1 of each year, so that the active term would always be five years:

The Board hereby employs Joseph Pandy, Jr. commencing July 1, 1992, and continuing until June 30, 1997, provided, however, that if Joseph Pandy, Jr. is employed on the first day of July in any subsequent year, the expiration date of this agreement shall be automatically extended to June 30 in the year five years following said first day of July. Joseph Pandy, Jr. is hereby appointed to the position of General Manager for the fiscal year beginning July 1, 1992, as provided in the Board's administrative rules.

The contract again specified that the arrangement was "at will," and included the same severance provisions verbatim.

On September 10, 2002, the Board held a meeting to discuss the employment agreement with Joseph Pandy, Jr. The Board resolved to declare the employment contract invalid, reasoning that a Board cannot bind successor Boards, and the contract essentially left future Boards stuck with keeping Pandy on as Director or paying him for the entire term of the contract. The Board terminated Pandy's employment without cause, and declined plaintiff severance pay on the contract.

Plaintiff filed suit, alleging breach of contract, among other claims. Defendant moved for summary disposition, pursuant to MCR 2.116(C)(8) of the breach of contract claim. The court denied the motion without prejudice. After further discovery, defendant renewed the motion under MCR 2.116(C)(8) and (10). The court again denied the motion, and defendant applied for leave to file this appeal.

We review summary disposition rulings de novo. *Joliet v Pitoniak*, 475 Mich 30, 35; 715 NW2d 60 (2006). A motion pursuant to MCR 2.116(C)(10) entitles the movant to summary disposition where there is no genuine issue of material fact. *Miller v Purcell*, 246 Mich App 244, 246; 631 NW2d 760 (2001). Issues of contract interpretation are questions of law we review de novo. *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005). Our primary obligation is to discern and effectuate the intent of the parties. *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003). We enforce unambiguous contract language as written. *Id.*

Defendant argues that the contract violates the Lansing Charter by impairing the Board's discretion to appoint and remove the BWL Director "at its pleasure." Lansing Charter, § 5-202. We agree.² We note that it is axiomatic that a contract in violation of a city charter is void. See *Smith v Garden City*, 372 Mich 189; 125 NW2d 269 (1963); *Knights of the Iron Horse v Detroit*, 300 Mich 467; 2 NW2d 466 (1942); *Ferle v Lansing*, 189 Mich 501; 155 NW 591 (1915).

Although the Board's conclusion that the employment agreement exceeds its authority is correct, its reasoning is not. We find that the issue is essentially this: the Charter grants the Board authority to enter into at-will employment agreements, but the contract at issue here is a for-cause agreement, irrespective of the at-will language included in the contract. First, the Charter language that the Board may appoint and remove the Director "at its pleasure" confirms that a Board has authority only to enter into at-will employment arrangements. Next, the term of the employment agreement specifying that if Pandy is terminated without cause, he is entitled to the full compensation and benefits he would have received for the length of the contract if he had not been terminated confirms that the contract is essentially a for-cause employment agreement.

Although employment agreements are presumptively at-will, that presumption may be overcome:

The presumption of employment at will is overcome with proof of either a contract provision for a definite term of employment, or one that forbids discharge absent just cause. Courts have recognized the following three ways by which a plaintiff can prove such contractual terms: (1) proof of "a contractual provision for a definite term of employment or a provision forbidding discharge absent just cause"; (2) an express agreement, either written or oral, regarding job security that is clear and unequivocal; or (3) a contractual provision, implied at law, where an employer's policies and procedures instill a "legitimate expectation" of job security in the employee. *Lytle v Malady*, 458 Mich 153, 164; 579 NW2d 906 (1998) (citations omitted).

Here, we find that the fact that Pandy would receive the entire benefit of the bargain whether terminated or not effectively "instill[s] a legitimate expectation of job security." *Id.*

There is no case law directly on point for this issue. However, we here hold that where an employment contract defines a minimum although renewable term of employment, and provides that an employee will receive full compensation for the entire minimum term of employment defined in the contract even if terminated, the contract is a for-cause agreement rather than an at-will agreement. The provision requiring full performance under the contract from the employer creates for the employee a legitimate expectation of job security for at least the minimum defined term of the contract.

² While the City Charter limits the Board's authority to enter into employment agreements specifically with the "Director," we find that here although the Agreement identifies the position as "General Manager," the Agreement also confirms that Pandy was employed as Director and General Manager. See fn 1.

Because the Board had authority only to engage a Director on an at-will basis, the contract as written was invalid, and defendant's motion for summary disposition on the breach of contract claim should have been granted. See *Manning v City of Hazel Park*, 202 Mich App 685, 693; 509 NW2d 874 (1993) ("The city charter clearly and unambiguously applies to the city manager and provides that the city manager holds office at the pleasure of the city council. Accordingly, the charter creates an unequivocal at-will employment policy with regard to the city manager.").

In addition, the Board had authority only to engage a Director for the length of its own term of office.

where the nature of an office or employment is such as to require a municipal board or officer to exercise a supervisory control over the appointee or employee, together with the power of removal, such employment or contract of employment by the board, it has been held, is in the exercise of a governmental function, and contracts relating thereto must not be extended beyond the life of the board. [*Johnson v Menominee*, 173 Mich App 690, 694; 434 NW2d 211 (1988).]

The Board therefore affirmatively lacked the authority to bind successor Boards to the employment agreement.

Reversed and remanded to the trial court to grant defendant's motion for summary disposition of the breach of contract claim and for consideration of plaintiff's remaining claims. We do not retain jurisdiction.

/s/ Jessica R. Cooper

/s/ Joel P. Hoekstra

/s/ Michael R. Smolenski